

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Billed Party Preference
for 0+ InterLATA Calls

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CC Docket No. 92-77
Phase I

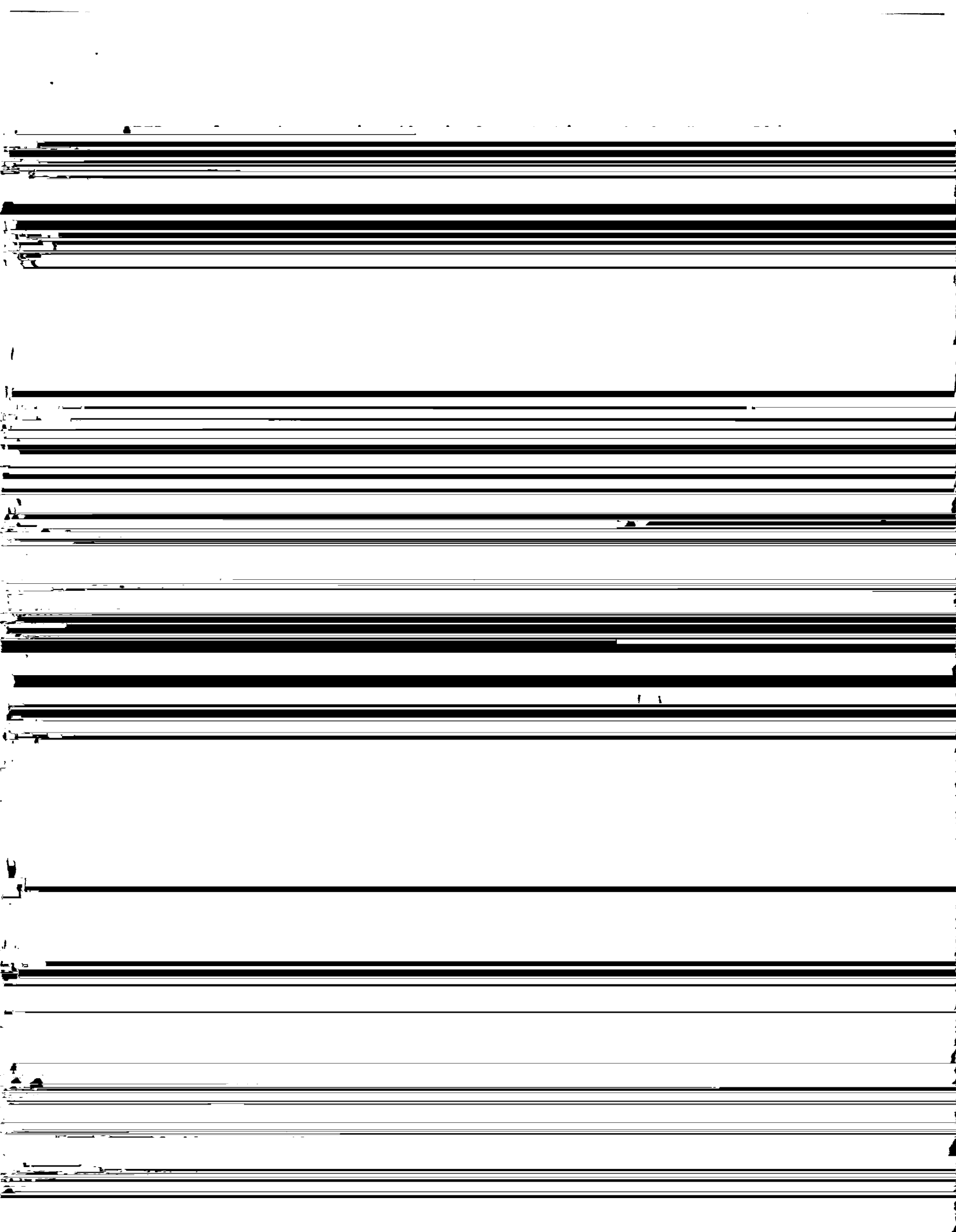
OPPOSITION TO SOUTHWESTERN BELL'S PETITION FOR RECONSIDERATION

Capital Network System, Inc. ("CNS"), by its undersigned attorneys, hereby opposes the "Petition for Reconsideration of Southwestern Bell Telephone Company" ("Petition") filed on January 11, 1993, in the above-captioned proceeding.

CNS is an interexchange carrier ("IXC") headquartered in Austin, Texas. Its primary business is the provision of high quality, operator-assisted calling services to the public. As a competitive operator services provider ("OSP"), CNS has continued to receive literally thousands of calls each day from American Telephone & Telegraph Company ("AT&T") cardholders who -- using the "0+" dialing instructions on their Card Issuer Identifier ("CIID") cards -- are connected automatically to CNS's network. Because AT&T continues to refuse to provide CNS with the information it needs to complete these CIID card calls and because the FCC has failed either to prohibit AT&T from using

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they hear the announcement of AT&T or a LEC." ^{5/} CNS opposes Southwestern Bell's proposal because it is based upon a faulty premise and because it would promote the type of calling patterns that the Commission already has found not to be in the public interest.

Southwestern Bell's Petition is based on a faulty premise because it assumes that the FCC's decision to reject the "0+ public domain" proposal and instead to impose "educational" requirements on AT&T was lawfully sufficient and sound as a matter of policy. In fact, the Commission's Order is unlawfully arbitrary and capricious since it is, inter alia, contrary to the record evidence in this proceeding and because the limited nature of the relief provided to OSPs is not in the public interest. The record in this proceeding overwhelmingly demonstrates that to solve the problems caused by AT&T's anticompetitive use of CIID cards the Commission must, at a minimum, establish "0+ public domain" access requirements on the use of AT&T's CIID cards. ^{6/} Nothing short of such action meets the Commission's legal obligation to establish rules that are rational and in the public interest. ^{7/} For this reason, CNS supports the petitions for

^{5/} Petition at 4.

^{6/} CNS Reply Comments at 10-18. See also Petition for Reconsideration of Competitive Telecommunications Association ("CompTel") at 7-16; Petition for Reconsideration of LDDS Communications, Inc. ("LDDS") at ii-iii; Value-Added Petition at 1, 3.

^{7/} 47 U.S.C. §§ 151, 154(i); Nader v. FCC, 520 F.2d 182, 192-93 (D.C. Cir. 1975); Competition in the Interstate Interexchange
(continued...)

reconsideration filed by others in this proceeding who have requested that the Commission revisit its refusal to adopt the "0+ public domain" proposal ^{8/} and opposes the Petition filed by Southwestern Bell.

CNS also opposes Southwestern Bell's Petition because it assumes that for both intraLATA and interLATA calls the Commission can solve the problem of callers being "mislead if they follow[] AT&T's educational materials" ^{2/} by just modifying the Commission's "educational" requirements. That assumption is incorrect. For the Commission to solve the serious, anticompetitive problems caused by AT&T's use of CIID cards, it must take stronger, pro-competitive action such as adoption of the "0+ public domain" proposal.

As correctly explained in other petitions for reconsideration, the Commission's failure to take appropriate action in its Order was based on the incorrect, factual conclusion that the costs of the "0+ public domain" proposal were greater than its benefits. ^{10/} As a result, the Commission's decision not to establish "0+ public domain" for those CIID cards

^{1/} (...continued)

Marketplace, 6 FCC Rcd 5880, 5881-82 (1991); Policy and Rules Concerning Rates For Competitive Common Carrier Services and Facilities Therefor, Second Report and Order; 91 FCC 2d 59, 61-62 (1982) (subsequent history omitted).

^{8/} See, e.g., CompTel Petition at 21; LDDS Petition at 1-2; MCI Petition at 1; Petition of Phonetel Technologies, Inc. at 8.

^{2/} Petition at 4.

^{10/} CompTel Petition at 16-20; ITI Petition at 4-5; MCI Petition at 2.

that are used by AT&T in a non-proprietary manner was unlawfully arbitrary and capricious. ^{11/} It was particularly arbitrary for the Commission to premise its decision, at least in large part, on the basis that adoption of the "0+ public domain" proposal would be, at most, only an "interim" remedy pending the adoption of billed party preference ("BPP") since there has been no FCC decision to implement BPP. ^{12/} The Order is also arbitrary because it never explained why access code calling would be too great an inconvenience for AT&T's 25 million cardholders -- great enough to tip the cost/benefit analysis away from the "0+ public domain" proposal -- but, at the same time, provides an easy and convenient form of access for the 32 million MCI and Sprint cardholders who use access code dialing. ^{13/} Therefore, for the Commission to solve the problems associated with the anticompetitive use of AT&T's CIID cards for both intraLATA and interLATA calls, it should not adopt Southwestern Bell's limited and ineffective proposal, but rather should implement a system of "0+ public domain" calling.

In addition, the Commission should not grant Southwestern Bell's Petition because it would continue -- if not make worse -- much of the customer confusion and improper cost shifting that the Commission has correctly identified as being a serious problem associated with the current use of AT&T's CIID cards. ^{14/} Specifically, Southwestern Bell suggests that the Commission modify its educational requirements so that rather than having the public place 0+ calls with their CIID cards from only those telephones that show AT&T as the presubscribed carrier, callers should instead be told to try to place their intraLATA "0+" calls from any telephone and merely hang-up if they hear a bong tone from a carrier other than AT&T or the LEC. Such an approach, which incorrectly assumes that callers always know when their calls are "intraLATA," will inevitably result in making it more difficult for many interLATA and intraLATA calls (where intraLATA competition is permitted) to be connected from non-AT&T telephones to AT&T's and the LECs' networks and result in further delay. This, in turn, will result in increasing customer confusion and anger -- problems associated with the current system that the Commission correctly recognized in its Order. ^{15/}

Furthermore, Southwestern Bell's approach would impose substantial and unjustifiable access, switch and other costs on OSPs other than AT&T and LECs. These costs would be incurred, of

^{14/} Id. at 7720.

^{15/} Id.

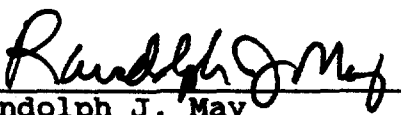
course, in transporting and handling the call until the first bong tone is generated and the caller hangs-up when its calls cannot be charged to an AT&T-issued CIID card. The imposition of these substantial costs on OSPs -- without the opportunity for full cost recovery -- would not only be unlawfully arbitrary and capricious, but also probably unconstitutional. ^{16/}

For the reasons discussed above, CNS requests that the Commission deny Southwestern Bell's Petition and grant the petitions of these parties, like CNS, who are asking the Commission to adopt the "0+ public domain" proposal.

Respectfully submitted,

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March 19, 1993

^{16/} The FCC's requirement that the OSPs submit to invasions of their physical property likely constitutes a "taking" under the Fifth Amendment. Such a regulatory "taking" could be unconstitutional without just compensation. U.S. Const. amend. V; Lucas v. South Carolina Coastal Council, 112 S. Ct. 2886, 2893 (1992); Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 421 (1982).

CERTIFICATE OF SERVICE

I, Joan T. Prouty, hereby certify that a copy of the foregoing Opposition to Southwestern Bell's Petition for Reconsideration of Capital Network System, Inc. has been served by first class mail, postage prepaid, on this 19th day of March 1993 to the following:

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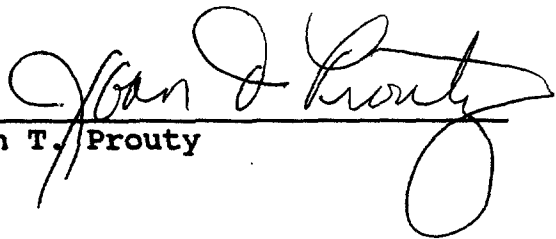
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